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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 RICHARD MERINO, individually
4 and on behalf of all others
similarly situated,

5 Plaintiffs, New York, N.Y.

6 v. 10 Civ. 706 (JSR)

7 BEVERAGE PLUS AMERICA CORP.,
8 et al.,

9 Defendants.

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10 December 8, 2011
11 10:05 a.m.

12 Before:

13 HON. RONALD L. ELLIS,

14 Magistrate Judge

15 APPEARANCES

16 SCOTT MICHELS
17 MAIA GOODELL
Attorneys for Plaintiffs

18 YUN C. CHO
19 YUN S. CHO
20 Defendants Pro se

21 ALSO PRESENT:
Selma Marks, Interpreter

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1 (In open court)

2 THE DEPUTY CLERK: In the matter of Richard Merino,
3 individually and on behalf of all others similarly situated v.
4 Beverage Plus America Corporation, *et al.*

5 All counsel please identify yourselves for the record.

6 MR. MICHELS: Scott Michels and Maia Goodell for the
7 plaintiffs, from Vladeck Waldman.

8 We have six of the plaintiffs with us. Mr. Primitivo
9 Aguilar, Colin Morales, Bernardo Vazquez Herrera, Jesus
10 Mantilla, Jorge Paes, and Richard Merino.

11 THE COURT: Good morning.

12 MR. MICHELS: Good morning.

13 THE DEPUTY CLERK: Defendants please stand and enter
14 your appearance for the record.

15 MR. YUN C. CHO: Good morning, your Honor. My name is
16 Yun C. Cho. I am a defendant, individual *pro se*.

17 MR. YUN S. CHO: Good morning, your Honor. My name is
18 Yun S. Cho. I am a defendant.

19 THE COURT: Thank you.

20 This proceeding is for the purpose of consideration of
21 damages in the case. I have a number of questions. I don't
22 have any set procedure. I do want to make sure that all the
23 issues concerning what are the appropriate damages, how they
24 should be calculated, each party gets an opportunity to weigh
25 in on.

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1 My first question concerns the second supplemental
2 affirmation that we received yesterday. Just so that I will
3 know where it fits in with what was already submitted, I would
4 like plaintiffs to explain to me what this does or how this
5 changes what was submitted before, what it adds to it. So that
6 way when we consider it, we will know exactly how to consider
7 it.

8 MR. MICHELS: Certainly, your Honor. What this does
9 is to submit different copies of Exhibits 13 through 23 of the
10 previous affirmation of Ms. Goodell. We added footnotes with
11 citations to the record to the new exhibits in the hopes that
12 our basis for our damages calculations would be a little bit
13 more clear. I believe we corrected a mathematical error on one
14 of our calculations of damages for Mr. Paes.

15 THE COURT: So did this result in a different number
16 for the request?

17 MR. MICHELS: It does, your Honor.

18 THE COURT: What is the request as you now understand
19 it to be?

20 MR. MICHELS: It is 1.694 -- sorry. 1,694,475.

21 THE INTERPRETER: Excuse me. Can you repeat the
22 amount?

23 MR. MICHELS: 1,694,475.

24 THE COURT: And so what is the breakdown of the
25 elements of that number?

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1 MR. MICHELS: We have calculated damages under the
2 Fair Labor Standards Act and the New York Labor Law for all of
3 the named and opt-in plaintiffs. We have also calculated a
4 separate amount of damages for the other class members under
5 the labor law, and we have also requested damages, compensatory
6 damages and punitive damages, for Mr. Merino for retaliation
7 for his termination.

8 THE COURT: So the only request for compensatory and
9 punitives has to do with Mr. Merino.

10 MR. MICHELS: Is for Mr. Merino, that's correct.

11 THE COURT: In Exhibit, I guess it would be 15A, you
12 have -- do you have 15A?

13 MR. MICHELS: Yes, your Honor.

14 THE COURT: That has several numbers on it, one of
15 which is 883,992. What does that number represent?

16 MR. MICHELS: That represents the total damages under
17 the labor law, including liquidated damages for the members of
18 the class, excluding the damages for the named and opt-in
19 plaintiffs.

20 THE INTERPRETER: Excluding what?

21 MR. MICHELS: The damages for the named and opt-in
22 plaintiffs.

23 THE COURT: And so the damages for the named and
24 opt-in plaintiffs, what exhibit is that on?

25 MR. MICHELS: They are on separate exhibits.

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1 THE COURT: You have to add them up?

2 MR. MICHELS: That's correct.

3 THE COURT: So which ones do you have to add up?

4 MR. MICHELS: Well, it would be the labor law damages
5 in Exhibit 16A through 23A.

6 THE COURT: So on 15A where you say or where you
7 indicate minus 122,000, that number represents what?

8 MR. MICHELS: That number represents the labor law
9 damages excluding liquidated damages that are due to the named
10 and opt-in plaintiffs.

11 THE COURT: New York Labor Law damages?

12 MR. MICHELS: Correct.

13 THE COURT: So presumably those damages would be
14 reflected in 16A to 23A?

15 MR. MICHELS: Correct, your Honor.

16 THE COURT: As to your methodology in calculating
17 damages, you don't have client records.

18 MR. MICHELS: That is right, your Honor.

19 THE COURT: But you do believe you have enough records
20 to determine what was the number of hours that a typical class
21 member worked.

22 MR. MICHELS: We do, your Honor. Looking at Exhibit
23 13A, it is a summary of the documents provided by defendants
24 that show the hours worked by at least some of the class
25 members, and what we have done is take the average number of

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1 hours worked per day for all of the employees for whom the
2 defendants produced documents, which comes out to about 10.35
3 hours per day on average.

4 THE INTERPRETER: How many, please?

5 MR. MICHELS: 10.35 hours per day on average.

6 We believe that we have enough records to indicate
7 that is a reasonably accurate number and it is also in line
8 with the affirmations from the plaintiffs and it is also in
9 line with some of the deposition testimony from the defendants.

10 THE COURT: And as to the plaintiffs who you did the
11 calculations for, the number of hours for them is based in part
12 on their affirmation?

13 MR. MICHELS: That is correct, your Honor.

14 THE COURT: Did the defendants ever challenge that?

15 MR. MICHELS: I don't believe that they did. They
16 have challenged our calculation of damages, but it appears that
17 their argument is merely that they paid overtime wages and
18 spread-of-hours wages and that was incorporated into the weekly
19 salaries that the plaintiffs earned. But I don't believe that
20 they have challenged our methodology for finding the average
21 number of hours per day.

22 THE COURT: Before we continue with you, let me ask
23 one of the Mr. Chos --

24 MR. YUN S. CHO: Yes, sir.

25 THE COURT: -- do you understand that part of the

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1 calculation here has to do with the average number of hours
2 that the plaintiffs worked?

3 MR. YUN S. CHO: Yes, I understand, your Honor. They
4 actually calculated it based upon the document I presented,
5 personnel record and a copy of time punching cards that I
6 supplied. But their mistake was when they calculated based
7 upon my personnel record, they could see how much I paid, and
8 also I wrote down those minimum wages overtimes. The figures
9 are there.

10 The only reason I paid a fixed amount is because all
11 the employee work -- they asked me to pay fixed amount. Since
12 our beverage business is very -- working hours are different,
13 like compared summer to winter. When winter comes, the working
14 hours going to get about 10 to 15 hours less than summertime.
15 So when I hired all those employees, I explained the things and
16 I gave them a choice. If you want a fixed amount or paying by
17 the hour. They all choose the cash in fixed amount because
18 they have family. They don't want to have fluctuating income,
19 I believe.

20 THE COURT: OK. Before you continue with that, as to
21 the question of how many hours they worked, do you have any
22 evidence to refute the proposition that the average number of
23 hours was 10.35 hours per day?

24 MR. YUN S. CHO: No; they just presume that the
25 average working hours is 10.3 hours a day, but actually it's

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1 not.

2 THE COURT: What do you have that shows that there was
3 a different number of hours worked per day? Do you have any
4 records?

5 MR. YUN S. CHO: I do, your Honor. On personnel
6 record there is a time I wrote down, and also I had a punch
7 card. Actually, I wanted to know each exactly hours, I want to
8 know exactly how much hours they work on days. So I have about
9 eight months' time punching cards that they worked.

10 THE COURT: You gave this to the plaintiffs?

11 MR. YUN S. CHO: Yes, sir.

12 THE COURT: Do you know what he is talking about?

13 MR. MICHELS: I do, your Honor. I believe that they
14 are included as Exhibit 12 to Ms. Goodell's original
15 affirmation dated October 14th. What we had done, essentially,
16 is to take the information in those documents and to put them
17 into a spreadsheet that you see here on Exhibit 13A.

18 THE COURT: Mr. Cho, you have seen these exhibits,
19 haven't you?

20 MR. YUN S. CHO: Yes, your Honor. It shows all the
21 overtimes and spread hours there, your Honor.

22 THE COURT: So what is wrong with it?

23 MR. YUN S. CHO: I don't know. I don't know why they
24 start with this claim in the first place.

25 THE COURT: OK. First of all, Mr. Cho, we are not

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1 here to relitigate any of the issues about liability. We are
2 here on a question of damages.

3 The first question I have is, the plaintiffs say that
4 the average workday was 10.35 hours. My simple question to you
5 is this. Do you have any evidence to refute the assertion that
6 the average number of hours worked was 10.35? Do you have any
7 documents? If you have some documents, you can try to enter
8 them into evidence and we will consider them.

9 MR. YUN S. CHO: It shows on the personnel records,
10 your Honor.

11 THE COURT: What shows on the personnel records?

12 MR. YUN S. CHO: Exhibit 4 and numbers D, E, F, there
13 is a personnel record that shows how many hours he worked
14 during that season.

15 THE COURT: I am not sure what Exhibit 4 you are
16 referring to.

17 MR. YUN S. CHO: Plaintiffs' motion for damages and
18 class notice, your Honor. The filing before this one.

19 THE COURT: What does that show in terms of the number
20 of hours worked?

21 MR. YUN S. CHO: Including overtime, 56 hours he
22 worked. It shows the 40 hours plus 1.5, one and a half. So
23 eight hours of overtime.

24 THE COURT: Do you know which document he is referring
25 to?

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1 MR. MICHELS: Yes, your Honor. If you look at Exhibit
2 12 to Ms. Goodell's original affirmation, on Defendants' 4, at
3 the bottom under remarks, I believe there are the numbers that
4 Mr. Cho is talking about. But the numbers that he is referring
5 to here, it is our understanding that this is Mr. Cho's
6 notation and his calculation of the hourly rate. But our
7 estimate of 10.35 hours a day is based on the actual time
8 sheets where plaintiffs clocked in and out everyday. You can
9 see them, for example, on Defendants' 16.

10 THE COURT: On Defendants' 16?

11 MR. MICHELS: Yes. It is Exhibit 12, Defendants' 16.

12 THE COURT: OK.

13 MR. MICHELS: This is one sample. So our calculation
14 of the hours per day are based on the time punch sheets.

15 What Mr. Cho is discussing is, first of all, hearsay
16 because it is his own sort of writing on the document; and
17 second of all, it is unreliable because what this is is what he
18 claims --

19 THE COURT: Let me make sure I understand. You have
20 the time sheets which they actually punched in and out?

21 MR. MICHELS: For part of the time that plaintiffs
22 worked there, yes.

23 THE COURT: Are there any samples where I could look
24 at an example, such as Defendants' 16, and compare it to the
25 remarks or notes that Mr. Cho made? I take it they don't agree

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1 with you.

2 MR. MICHELS: Yes. That is correct, your Honor.

3 THE COURT: Mr. Cho, you made these remarks in the
4 personnel records?

5 MR. YUN S. CHO: I beg your pardon, your Honor?

6 THE COURT: These are the actual personnel records?

7 MR. YUN S. CHO: Yes, your Honor, because this
8 notation was before I start clocking in my employees. So I had
9 to make sure that I have how many hours they worked and
10 overtime how many hours they worked.

11 THE COURT: My question then is, are there any
12 examples -- so you are saying that these are two separate time
13 periods?

14 MR. YUN S. CHO: Yes, sir.

15 THE COURT: The time period of you making the remarks
16 and the time period when they are punching in.

17 MR. YUN S. CHO: When I start clocking the employees,
18 then I don't have to write down on the personnel record how
19 many hours they worked because the time sheet shows how many
20 hours they worked.

21 THE COURT: Is that correct, counsel?

22 MR. MICHELS: I'm sorry. Which part?

23 THE COURT: If I understand correctly, and I
24 understand you are raising questions about whether it is
25 hearsay, self-serving or whatever, but Mr. Cho says that we

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1 have two kinds of records. One is the ones in which he made
2 remarks, in which he indicates what the time was, and then you
3 have the time records where they punch in and punch out, which
4 presumably the machine indicates the time.

5 MR. MICHELS: Yes. I mean, that's correct, your
6 Honor. I'm not sure, actually, if Mr. Cho wrote down these
7 remarks during the period during which the plaintiffs clocked
8 in and out. I mean it appears that, based on Exhibit 12,
9 Defendants' 1, for example, which is the personnel record for
10 Richard Merino, that he did write these remarks during at least
11 some of the time when the plaintiffs used the time card.

12 THE COURT: OK. I understand to the extent that you
13 have actual time clock entries you can see what the number of
14 hours were. The time clock entries start when?

15 MR. MICHELS: I believe that they run for a period
16 in --

17 THE COURT: When do they start?

18 MR. MICHELS: I believe, your Honor, it is June 2008.

19 THE COURT: It is your assumption that the number of
20 hours were consistent before the time clock started?

21 MR. MICHELS: Yes. Yes, your Honor.

22 THE COURT: And it is your assertion, Mr. Cho, that
23 the records that you have that are handwritten are the correct
24 indication of the time that was worked?

25 MR. YUN S. CHO: Yes, your Honor.

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1 THE COURT: Counsel, do you also have testimony from
2 the plaintiffs about whether or not there was any variation in
3 the time between the pre-time clock and after the time clock in
4 terms of how they worked?

5 MR. MICHELS: Yes. I believe that their testimony is
6 that they worked a consistent number of hours during the entire
7 period of employment. Also, if you look again at Defendants'
8 1, Exhibit 12, under the remarks, even if we were to consider
9 these, they appear to show up around 50 hours of work per week,
10 which is consistent with the time punch cards and consistent
11 with plaintiffs' testimony.

12 THE COURT: It shows more than 50 hours.

13 MR. MICHELS: It does. My understanding is that this
14 is purportedly a calculation that includes overtime and spread
15 of hours. In other words, it includes time and a half.

16 THE COURT: Mr. Cho, when are you alleging that these
17 entries were made, the remarks? Are you saying they are
18 contemporaneously?

19 MR. YUN S. CHO: It was between July 15, 2008 to
20 January 16, '09. A six-month period.

21 THE COURT: You mean that you made these remarks?

22 MR. YUN S. CHO: Yes, your Honor.

23 THE COURT: Isn't that when the time clocks were being
24 used?

25 MR. YUN S. CHO: No, your Honor.

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1 THE COURT: When did the time clock start?

2 MR. MICHELS: Your Honor, I believe that we have time
3 card records, at least for Mr. Merino, during that period, July
4 2008 until early 2009.

5 MR. YUN S. CHO: Your Honor, the remark I put on my
6 personnel records, based on these time cards, when I try this
7 time clocking, I wrote down the total hours.

8 THE COURT: And why were you making these remarks?

9 MR. YUN S. CHO: Because at the time nobody wants by
10 paying an hour either. I ask many times. So I need to know
11 how many hours they worked. So I didn't calculate each time
12 sheet because it wasn't necessary. So I just put a note on my
13 personnel record how many hours individual to pay.

14 THE COURT: So is it your assertion that there was not
15 10.35 hours of overtime?

16 MR. YUN S. CHO: No. I think it is less than that
17 because wintertime is really slow time of year. Sometimes they
18 work less than 40 hours a week.

19 THE COURT: And do you have any evidence, any
20 documentary evidence, which shows anybody working less than 40
21 hours a week or less than 50 hours a week?

22 MR. YUN S. CHO: I think so, your Honor. The copy of
23 the time card I provide to plaintiffs' counsel, there is
24 December and January time sheets. If they can calculate, it is
25 a lot less than summertime. It is right here, your Honor.

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1 THE COURT: Some of the time sheets that defendants
2 did produce, did they cover, quote-unquote, the winter months?

3 MR. MICHELS: They did, your Honor.

4 THE COURT: Any apparent pattern there?

5 MR. MICHELS: I mean, I believe that that is correct,
6 that the plaintiffs worked somewhat fewer hours during the
7 winter months than they did during the summer months. But our
8 calculation of 10.35 is an average that includes records for
9 both summer and winter, and the testimony from the plaintiffs
10 is that they worked quite a bit longer than ten hours a day,
11 often 12 hours a day during the summer. I believe Mr. Cho in
12 his deposition confirmed that, at least as to the summer
13 months.

14 MR. YUN S. CHO: Also summertime employee also clocked
15 in. So at least this time card shows exact hours they worked,
16 even though they think they work longer hours, but actually
17 it's not.

18 THE COURT: Well, the plaintiffs are relying on the
19 time cards, though.

20 MR. YUN S. CHO: What they produce with 10.35 hours a
21 week, I just receive today, your Honor. I'm not sure this is
22 right, how they can calculate that. I don't have the time to
23 review, your Honor.

24 THE COURT: When you say you just received it today,
25 are you saying you didn't receive the plaintiffs' original

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1 submission?

2 MR. YUN S. CHO: The amended one I didn't, your Honor.
3 Yesterday.

4 THE COURT: I understand yesterday, but before that
5 the plaintiffs had already made a submission in which they
6 indicated the number of hours of overtime was 10.35. Are you
7 saying you did not get the earlier submission?

8 MR. YUN S. CHO: Maybe I was confused, your Honor.

9 THE COURT: That would have been sometime in October,
10 middle of October.

11 While you are thinking about that, I do see that the
12 first issue is whether or not 10.35 is a reasonable number
13 given the lack of total records. From the defendants' point of
14 view, you do understand that if you don't have any evidence to
15 refute the 10.35 hours, then the calculations based on that
16 will be objectively reasonable?

17 The plaintiffs have testified, according to counsel,
18 that they worked pretty much the same number of hours during
19 the period of time that is at issue and that the time cards
20 that do exist show that is an average of 10.35 hours. That
21 seems pretty straightforward. To the extent that you want me
22 to consider some other number, I would have to have some
23 objective evidence other than you just saying they worked less.
24 If you don't have anything, then you can expect that I will
25 find that 10.35 hours seems to be a reasonable calculation

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1 based on the lack of additional records.

2 MR. YUN S. CHO: Your Honor, I don't have any
3 objection how many hours actually they worked. It is the
4 working hours -- if they argue with all the employees worked
5 average 10.35 hours, it's fine. The thing is I paid
6 accordingly all 10.3 hours per day when they work, I paid
7 fully, including overtimes, your Honor. I have records shows
8 how many hours they worked so how much money I supposed to pay.
9 But since they ask for a fixed amount, that is the way I did
10 it, which means wintertime they overpaid, but they don't say
11 anything about that.

12 THE COURT: I understand the argument you are making.
13 I just don't have any particular evidence about it. You did
14 not submit any affidavits or affirmations in opposition to the
15 plaintiff, as I recall. You made some statements. You didn't
16 submit an affidavit in which you challenged the 10.35 hours,
17 did you?

18 MR. YUN S. CHO: No, your Honor, because we paid --
19 I'm sorry, your Honor. Because as I mentioned before, I paid
20 all the money I suppose to pay for that 10.35 hours.

21 THE COURT: All right. That is certainly one of the
22 pivotal questions the court has to answer, what is the number
23 of hours worked. It seems to me these calculations is all we
24 have.

25 MR. MICHELS: That is correct, your Honor.

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1 THE COURT: So as regards that issue, as I said,
2 Mr. Cho, unless there is some objective evidence indicating
3 that the 10.35 is not reasonable, given the lack of records,
4 then the use of that number seems to be justified. You should
5 keep that in mind as we proceed through this.

6 Now the other elements that you have, I guess there is
7 a question of willfulness.

8 MR. MICHELS: That is correct, your Honor.

9 THE COURT: You want me to presume willfulness?

10 MR. MICHELS: Yes.

11 THE COURT: What do you want me to consider in that
12 presumption?

13 MR. MICHELS: The standard is that the defendants
14 acted willfully if they knew that what they were doing was
15 wrong or whether they acted with reckless disregard for the
16 law.

17 First of all, the fact that the defendants have
18 defaulted in this case --

19 THE INTERPRETER: Excuse me?

20 MR. MICHELS: The fact that the defendants have
21 defaulted in the case we believe should entitle us to a
22 presumption of willfulness. Regardless of that, the defendants
23 in their depositions testified that they were aware at all
24 times of their obligation to pay overtime and spread-of-hours
25 wages. We have established at this point that they have not

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1 done so and I don't believe that there is any evidence to show
2 that they made a good faith attempt to pay in compliance with
3 the law.

4 THE COURT: So as to the facts, which they are bound
5 by on the default, one fact that they are bound by is they knew
6 they were supposed to pay and, two, because of the default that
7 they did in fact not pay the correct amount.

8 MR. MICHELS: That's correct, your Honor.

9 THE COURT: So I understand the calculations you did
10 with respect to the plaintiffs and the opt-ins, and you assume
11 that that was the same for those who we haven't identified yet
12 or have not come forward yet.

13 MR. MICHELS: In terms of the hours worked.

14 THE COURT: Yes.

15 MR. MICHELS: Yes, that's right.

16 THE COURT: And you want me to make a finding on
17 damages assuming that the number of class members which you
18 have identified all worked that same number of hours.

19 MR. MICHELS: Well, they worked the same average
20 number of hours per day. Correct.

21 THE COURT: What evidence do you have of that, or are
22 we just going to presume that based upon the fact that --
23 should I assume that every class member worked the same as the
24 ones you do know?

25 MR. MICHELS: I mean, that presumption is based on the

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1 fact that the named and opt-in plaintiffs generally worked the
2 same number of hours per day. Not exactly, but very close, and
3 the fact that we don't have evidence to suggest a different
4 number of hours for the unknown class members.

5 We do, actually, your Honor, have -- I should correct
6 that statement. We do have some time cards for the potential
7 class members who are not named plaintiffs that were produced
8 by defendants that were included in our calculation of 10.35
9 hours.

10 THE COURT: And they are consistent with the
11 assumption that everybody worked the same number of hours?

12 MR. MICHELS: Yes, your Honor.

13 THE COURT: Do you understand, Mr. Cho?

14 MR. YUN S. CHO: Yes, your Honor.

15 THE COURT: Do you have any evidence concerning the
16 class members who have not opted in concerning their hours? I
17 assume you produced all of the records that you do have to the
18 plaintiff.

19 MR. YUN S. CHO: No, your Honor. Once in a while
20 somebody gets home early, somebody gets late because of
21 traffic, but it doesn't happen much. So I guess they worked
22 about the same hours.

23 THE COURT: Counsel, assuming that I agree with you
24 and you do calculations based upon all of the class members and
25 you come to this number that you have proposed, are you going

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1 to send notice requirement to show up and claim their prize, so
2 to speak?

3 MR. MICHELS: Ms. Goodell is going to address this.

4 MS. GOODELL: Your Honor, with your permission I will
5 address the class issues.

6 THE COURT: OK.

7 MS. GOODELL: Yes, your Honor. We have attached a
8 form of proposed notice to be mailed to those class members
9 whose mailing address or last-known mailing address can be
10 ascertained -- that is Appendix A to our brief -- as well as a
11 proposed notice to post in a newspaper and in the neighborhood.
12 We would also ask the court to order that defendant post it at
13 their workplace. And we will obviously do our best to identify
14 as many class members as possible.

15 THE COURT: What do you propose to do if they don't
16 come forward?

17 MS. GOODELL: If they don't come forward, we will
18 apply to the court for a cy pres distribution.

19 THE COURT: What is it that you are suggesting the
20 court do, that defendants pay some money into some kind of an
21 account?

22 MS. GOODELL: I think that would probably be the
23 easiest, would be to pay it into an escrow account, and we
24 would distribute as much as we can. Then what we are proposing
25 is that after a period of four months from that payment

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1 anything that has not been distributed we would apply for a
2 distribution.

3 THE COURT: Do you think that the defendants should
4 have an opportunity to contest anyone who comes forward?

5 MS. GOODELL: We have proposed that they provide an
6 opt-in notice with dates.

7 THE COURT: I understand.

8 MS. GOODELL: I think at this point that defendants
9 have produced all of the records that they claim they have, so
10 I'm not sure what they would contest it with.

11 THE COURT: That is a different issue. How would they
12 contest it. The question is should they have a right to
13 contest.

14 I don't know what evidence they have or may have or
15 who is going to come forward. Someone may come forward and
16 they may say we remember this person and they will say this
17 person wasn't even there. The real question is from the point
18 of view of their due process rights, what they are entitled to.
19 The default doesn't mean that you get to pay damages regardless
20 of what happens. Do you have a proposed or suggested
21 mechanism? Of course we could say that there is a presumption
22 and then the defendants could indicate whether or not they
23 intend to challenge and what their challenge is. If they don't
24 have any evidence, then --

25 MS. GOODELL: Your Honor, that would be one way to do

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1 it. I do think that in this case, because it is actually
2 undisputed that the number of workers at a given time was
3 fairly ascertainable, so there were about six to eight workers
4 at any given time and that is what our calculation is based on,
5 the total amount of damages is a different question than the
6 question of sort of who would be in the class. So we think it
7 is appropriate to order them to pay the total amount of
8 damages.

9 If they want to contest how that gets divided up,
10 whether a particular class member is entitled to as much of the
11 pie as they are claiming, I don't think that we would have a
12 huge objection to that. We would argue that at this point it
13 has been years in this litigation. They have come forward with
14 all the documents they have come forward with. We have used
15 them all. Their right to sort of come up with new records at
16 this stage of the litigation we would argue is not appropriate.

17 THE COURT: And what about your suggestion, proposal
18 for cy pres distribution? To the extent that a class member
19 doesn't come forward and doesn't request damages, since damages
20 are not presumed even with the default, why should the
21 defendant pay damages to somebody who hasn't come forward?
22 Well, not pay it to them, but lose the benefit of it.

23 MS. GOODELL: Your Honor, the Second Circuit Masters
24 case, which is cited in our brief at page 25, specifically
25 approves a distribution like that, particularly in a case like

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1 this where the class is difficult to ascertain because the
2 workers are transient, many work for a short period of time.
3 That shouldn't give defendant the right to be off the hook for
4 not paying overtime. It is really undisputed that they had
5 this number of workers who worked this number of hours and they
6 didn't pay them overtime.

7 THE COURT: Do you have anything to say, Mr. Cho?

8 MR. YUN S. CHO: Yes, your Honor. When I start
9 business in 2004, I had only two trucks. I had only four
10 employees at that time. The plaintiffs' counsel just argued
11 that after I grow my business to four trucks, they are basing
12 it on that activity when we were kind of busier than before.

13 THE COURT: So you are saying you didn't have six to
14 eight employees.

15 MR. YUN S. CHO: No, your Honor.

16 THE COURT: Do you have any evidence of the number of
17 employees that you had during the whole period of time?

18 MR. YUN S. CHO: I don't have, your Honor.

19 THE COURT: OK. Again, you understand, Mr. Cho, to
20 the extent that you don't have any evidence and you don't have
21 any records, then what we have is the testimony of the
22 plaintiffs and the records that they do have indicating the
23 number of employees.

24 MR. YUN S. CHO: The one of the plaintiffs, Merino,
25 knows how many workers worked back then.

1C8HMERH

1 THE COURT: Was Mr. Merino deposed?

2 MR. MICHELS: No, your Honor.

3 THE COURT: So what evidence do we have about the
4 number of employees during the entire period of time?

5 MR. MICHELS: We have, first of all, affirmations from
6 the plaintiffs who worked at different periods of time,
7 including one from Mr. Merino. I'm sorry, your Honor. I'm
8 just looking for the right paragraph in his affirmation.

9 The affirmation, the plaintiffs have said that they
10 typically had six to eight workers there. I believe Mr. Cho
11 during his deposition said that he had between five and eight
12 workers on average working as well.

13 THE COURT: Were those affirmations or any of the
14 testimony specific as to years?

15 MR. MICHELS: They were specific -- I believe that
16 they were not, your Honor. They were specific to the time
17 period when each individual and opt-in plaintiffs worked there.

18 THE COURT: Does that cover the entire period of
19 liability?

20 MR. MICHELS: I believe that it does, your Honor.

21 THE COURT: When was Mr. Merino there?

22 MR. MICHELS: September 2004 until March of 2010.

23 THE COURT: And he filed an affirmation saying that
24 there were six to eight people during the period of time he was
25 there.

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1 MR. MICHELS: His affirmation says that there were up
2 to nine helpers and drivers working at any one time and that he
3 estimated that over 100 people were employed during the six
4 years that he worked there.

5 THE COURT: What about the attorneys' fees? You don't
6 have an itemization for attorneys' fees.

7 MR. MICHELS: We have not submitted it, your Honor.
8 We would propose that at the conclusion of the case to submit
9 an application for fees.

10 THE COURT: Say that again.

11 MR. MICHELS: We would propose to submit a fee
12 application.

13 THE COURT: When?

14 MR. MICHELS: I mean at any point that your Honor
15 would like us to do it. Our thought was to wait until the
16 conclusion of the damages proceedings, since we still will be
17 working on the case.

18 THE COURT: I think the concern I have is if I am
19 going to make a recommendation on damages, the judge would
20 probably want to have a recommendation on the fees also. But I
21 could be wrong on that. Certainly that could mean that the
22 judge would allow you supplementation, but just to have
23 something to frame the issues that would be some indication of
24 what the magnitude is so we don't have to do this piecemeal.

25 Since I haven't seen it, I guess I can't comment on

1C8HMERH

1 the fees. Is there anybody that you want to put on for
2 testimony?

3 MR. MICHELS: No, your Honor, not unless the court
4 would like to hear it.

5 THE COURT: I would like to hear from Mr. Merino.

6 Mr. Merino, please come forward and be sworn.

7 There are a number of issues that were raised with
8 respect to Mr. Merino, just so everybody can be put on notice,
9 including the number of employees that were there, the hours
10 that he worked, and any questions that bear on the compensatory
11 damages that he is seeking. I think to the extent that he is
12 seeking damages other than the pure calculation, the defendants
13 have a right to.

14 RICHARD MERINO,

15 called as a witness by plaintiffs

16 having been duly sworn, testified through an interpreter
17 as follows:

18 THE COURT: I, of course, would prefer that counsel
19 ask questions, but you understand the issues that I am
20 interested in. I know he has done an affirmation, but I do
21 want the record to be clear about the issues that we raised,
22 and since he is a live body that we have.

23 MS. GOODELL: Absolutely, your Honor. No problem.

24 THE COURT: You may begin when ready, counsel.
25

1C8HMERH

1 DIRECT EXAMINATION

2 BY MS. GOODELL:

3 Q. Good morning, Mr. Merino.

4 A. Good morning.

5 Q. You worked for defendant Yun S. Cho?

6 A. Yes, that's right.

7 Q. When did you first work for Mr. Cho?

8 A. In September, around September of 2004.

9 Q. And when did you stop working for Mr. Cho?

10 A. On March 2010, because he fired me.

11 Q. During that time, from September 2004 through March 2010,
12 were your hours generally the same or were they different in
13 different years, something else?

14 A. The same.

15 THE INTERPRETER: The interpreter corrects herself.

16 A. Similar.

17 Q. And what hours did you work?

18 A. Around eleven hours per day.

19 Q. What time did you start work in the morning?

20 A. At 7, and I had no set hour to leave. Until they let us go
21 home.

22 Q. And about when did they let you go home?

23 A. 5:30, 6, 7.

24 Q. You said that you were fired in March of 2010?

25 A. Yes.

1C8HMERH

Merino - direct

1 Q. What happened?

2 A. I worked my regular week and it was only when I went on
3 Friday to Mr. Cho that he was paying, he called me into his
4 office and then he handed me out my check, I mean my money, and
5 then he gave me a letter that said letter of termination and he
6 told me this is your last day of work.

7 Q. Had he ever told you that there was a problem with your
8 work such that you might be fired before that?

9 A. No. Never.

10 Q. Do you know when the complaint in this lawsuit was filed?

11 A. In February of 2010.

12 Q. And did you hear anything at work that would make you think
13 that Mr. Cho knew that you had participated in that complaint?

14 A. Yes.

15 Q. What was that?

16 A. First I became aware that he got the notification on a
17 Thursday, and next Monday, at the beginning of the week, he
18 asked us to start punching with a clock.

19 Q. And can you compare what you were paid after you started
20 punching with a clock and before?

21 A. Yes. I worked the same amount of hours I used to work
22 regularly, but my weekly pay was \$40 less.

23 Q. What else happened at work at that point?

24 A. Well, next week there was a complaint by a customer of his
25 with respect to my helper due to security reasons, and I was

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Merino - direct

1 not involved in the controversy that took place at that point
2 in time, but Mr. Cho said that I was the reason of the problem.

3 Q. Had there been issues with customers before in the time you
4 had worked for Mr. Cho?

5 A. No.

6 Q. After you were fired, how did that make you feel?

7 A. Well, first concerned and a bit scared because I didn't
8 have any other source of money. My first concern was my mother
9 in Mexico because I wasn't able to send her any, because I used
10 to send her weekly. And not being able to do that was my first
11 concern.

12 In the second place, and my second concern, was my
13 expenses, my rent, my bills, all I had to pay for. I had a bit
14 of savings and that's what I lived on for a couple of months,
15 but afterwards my money ends and then I had to ask for a loan
16 in order to be able to pay my rent and some bills I had. And
17 that led me to depression because I was desperate. I wasn't
18 able to find any work. I was depressed. I was stressed the
19 whole time. Sometimes I was unable to sleep. And then, well,
20 more than anything, in the end I was able to find a job in
21 September and, thank God, that's what's helped me to get out of
22 my depression and to go forward.

23 Q. Can you tell me more about how it affected you being
24 depressed. What did that feel like?

25 A. More than anything I was feeling very stressed. Many

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Merino - direct

1 things I had in my mind. I had a lot of problems. I wasn't
2 able to sleep. I lost a lot of weight, so that even my
3 relatives kept asking me whether I was sick because I lost a
4 lot of weight. And that's what it was like throughout that
5 time. That's how I was. I wasn't even able to get out of bed.
6 I was feeling very sad and very desperate.

7 Q. One more question. Was the name of Mr. Cho's company the
8 same the whole time you worked there?

9 A. No. The second week of February the management of the
10 company asked us to change the plates in the trucks, and then
11 afterwards I realized that the name in the registration was
12 also changed and it had a new name, from SMC Beverage Plus to
13 Graham Beverage Corporation. And the insurance used to be in
14 the name of the company, but it changed to the name of Joseph
15 Kim.

16 Q. When were those changes in relationship to when the
17 complaint in this case was filed?

18 A. Two weeks after he was handed the notification of the
19 lawsuit.

20 THE COURT: Do you want to identify who "he" is. Just
21 for the record, "he" meaning?

22 THE WITNESS: Mr. Cho, the one to the left.

23 THE COURT: Who is?

24 THE WITNESS: He is the owner of the company.

25 Q. That is Yun S. Cho?

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Merino - direct

1 A. Yun S. Cho.

2 THE COURT: That's all right.

3 Anything else?

4 MS. GOODELL: We have nothing further.

5 THE COURT: I have a question before I give the
6 defendants a chance.

7 When you started in 2004, how many employees were
8 there?

9 THE WITNESS: There were five.

10 THE COURT: That includes you?

11 THE WITNESS: Yes. A month after he employed more
12 people. And from that point on until I left he had seven
13 people, in between seven and nine people. No less than seven
14 the whole time.

15 THE COURT: By the end of 2004, the number had gone
16 up?

17 THE WITNESS: No. It was over the winter. I would
18 say that by March he already had more people.

19 THE COURT: OK. Any questions from the defendant?

20 MR. YUN S. CHO: Yes, your Honor.

21 CROSS EXAMINATION

22 BY MR. YUN S. CHO:

23 Q. You said you started working in September 15, '04, 2004
24 until --

25 THE INTERPRETER: Excuse me.

1C8HMERH

Merino - cross

1 Q. -- March 12, 2010.

2 THE INTERPRETER: Your Honor.

3 THE COURT: I know. This can be more difficult.

4 Wait until we are clear that he is finished with his
5 question.

6 MR. YUN S. CHO: I want to make simple question, your
7 Honor.

8 Q. Are you sure you start September '04 until I let you go in
9 March 2010?

10 A. Well, to be sure, I never gave an exact date. Never. I
11 only said around September 2004 until I was fired in March in
12 2010.

13 MR. YUN S. CHO: Your Honor, on my record, October
14 2006 he left the company without any notice. He left company
15 for about two months. He moved to another state, and he
16 couldn't stay there and asked for me his job again two months
17 later. He does not even remember this, sir.

18 THE COURT: So you are saying that he was off for two
19 months. Is this in dispute, by the way?

20 MS. GOODELL: I believe the amount of time is somewhat
21 in dispute. He only testified as to his first and last date
22 there, so I don't think there is any contradiction.

23 MR. YUN S. CHO: I am trying to say, your Honor, his
24 testimony is based on not certain memories. He said he worked
25 whole year, but he doesn't remember how many months he didn't

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Merino - cross

1 work. He left company. And also on his statements there is
2 one accident, cause me a lot of money, a year later. He
3 doesn't remember, said he doesn't remember. Obviously I have
4 some record of accident, but he says he doesn't remember.

5 THE COURT: Let me ask you this. Are there any
6 factual issues you want to ask him about? You can make
7 arguments to me, but since he is on the stand and sworn, what
8 facts do you want to get from him?

9 MR. YUN S. CHO: He stated that I have employed more
10 than 100 people over the years. I don't know how he can know
11 that I have that many people.

12 THE COURT: If you want to ask him some specific
13 questions, you can ask him specific questions.

14 Q. How do you know I have employed more than 100 people over
15 the years?

16 A. First, what I said that I remember, that he has employed
17 about 100 people, about 100 people, and the reason being
18 because the work is hard. There were even people who only
19 lasted two days there because the work is hard.

20 THE COURT: Before we get too far afield on this, it
21 is not my understanding that the plaintiffs' calculations are
22 based just on the estimates that Mr. Merino made.

23 MR. YUN S. CHO: That is what I am trying to say, your
24 Honor.

25 THE COURT: I understand. But the calculations that

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Merino - cross

1 you did, counsel, based on what records you had or estimates,
2 it is based on -- tell me what it is based on.

3 MS. GOODELL: Your Honor, for the class it is based on
4 the total number of workers at any given time. The question of
5 how many workers there were total, in other words, the
6 turnover, was an issue of numerosity that has already been
7 decided on class certification.

8 THE COURT: So we don't know how many class members
9 there are.

10 MS. GOODELL: The estimates are over 60. The
11 estimates are over 60.

12 THE COURT: Based on?

13 MS. GOODELL: That is just based on the turnover. In
14 other words, for a total of approximately eight workers at any
15 given time. But since there is turnover, the total number of
16 people who have worked there during the limitations period in
17 the past six years before the complaint was filed would be over
18 60.

19 THE COURT: I understand, but your calculation was
20 based on what the number for your class calculation.

21 MS. GOODELL: It is based on the number of people
22 there at any one time.

23 THE COURT: What is the number that you used? Did you
24 use 60?

25 MR. MICHELS: We assumed that there were six workers

1C8HMERH

Merino - cross

1 there plus two more workers during the summer.

2 THE COURT: OK. So it doesn't really matter what the
3 turnover is the way your calculation is done. You are just
4 assuming if there are six to eight it doesn't matter whether it
5 is new people, old people, it is just that over the course of
6 time --

7 MS. GOODELL: That is correct, your Honor.

8 MR. MICHELS: That is correct.

9 MS. GOODELL: Mr. Cho is referring to Mr. Merino's
10 affidavit which was done in support of numerosity.

11 THE INTERPRETER: I'm sorry, your Honor. The
12 interpreter cannot hear.

13 MS. GOODELL: The estimate that Mr. Cho is referring
14 to is for numerosity and class certification and that has
15 already been decided.

16 THE COURT: Mr. Cho, I know you are not an attorney,
17 but the affidavit that Mr. Merino did was to determine whether
18 or not there were enough class members to make a class. So
19 even if the estimate was off -- he said 100 -- the law is
20 typically if you have 40 or more, that is enough for a class.
21 So even if he said 60 or 40 or 50, his guess, that would have
22 probably been enough for them to get the class.

23 MR. YUN S. CHO: That is what I am trying to say, your
24 Honor. Over the years so many people work a long time in spite
25 of Mr. Merino said it's hard work.

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Merino - cross

1 THE COURT: You are not listening to me, Mr. Cho. The
2 bottom line is regardless of what the number is, the
3 calculations that counsel did do not depend on the total number
4 of workers. What was important was the average number of
5 workers. It is not a question of whether or not there were 100
6 or 80 or 60. The issue was whether or not there were about six
7 to eight at any given time. So unless you have some evidence
8 to refute that the number of employees was approximately six to
9 eight during the period of time covered by the damages.

10 MR. YUN S. CHO: Yes, sir. As I mentioned before,
11 when I started business it was first low. I mentioned before,
12 I had four people, five people, for two years. I had only two
13 trucks.

14 THE COURT: What period are you talking about?

15 MR. YUN S. CHO: 2004 and 2005.

16 THE COURT: And Mr. Merino says that it was five when
17 he started and then it went up in about March of the next
18 year. You can ask him about that.

19 MR. YUN S. CHO: It was four people, your Honor. I
20 don't know why he is saying five. He is kind of exaggerating
21 all the facts.

22 THE COURT: Well, that is his testimony.

23 MR. YUN S. CHO: I have one more question, your Honor.
24 On his statement he said when he was fired he gets \$490 per
25 week, which is less than \$40 from previous week.

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Merino - cross

1 Q. Do you know why you get that amount?

2 A. Well, he was supposed to pay per hour.

3 MR. YUN S. CHO: As I mentioned before, your Honor,
4 the wintertime is very slow. If he wants I pay him an hour, I
5 have to give him a lot less.

6 THE COURT: The question you are addressing now is why
7 he would have --

8 MR. YUN S. CHO: He doesn't even know.

9 THE COURT: Mr. Cho. The question you are addressing
10 now is why he got \$490 when he was terminated?

11 MR. YUN S. CHO: Yes, your Honor.

12 I want to point out, the money he gets is fixed amount
13 or by the hour. He doesn't really understand. He was same
14 amount all the time.

15 THE COURT: You should understand how, Mr. Cho, much
16 of that testimony went to the question of retaliation and the
17 retaliation, the major part of the retaliation, has to do with
18 whether or not the termination was a result of him exercising
19 his rights. Even if the 490 had a good explanation, that would
20 not get to the heart of it being retaliation.

21 MR. YUN S. CHO: No, your Honor, it wasn't
22 retaliation.

23 THE COURT: So in order to challenge the retaliation,
24 you can demonstrate or present evidence that he was not
25 terminated because he exercised his rights to complain about

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Merino - cross

1 discrimination.

2 MR. YUN S. CHO: Your Honor, we have been through this
3 before with Rakoff, Judge Rakoff. The plaintiff answered
4 motion about retaliation, but we won the case because by that
5 time coincidentally he was acting out.

6 THE COURT: I'm sorry. Are you saying that Judge
7 Rakoff ruled there was no retaliation?

8 MR. YUN S. CHO: No, your Honor. You should have
9 court records.

10 THE COURT: I am not sure what you are referring to.

11 MS. GOODELL: He is referring to the preliminary
12 injunction hearing, your Honor, where Judge Rakoff denied a
13 preliminary injunction, reinstating Mr. Merino on the basis
14 that he didn't think that there was a probability of success on
15 that claim. That ruling obviously is no longer effective.
16 What is effective is defendants' default on this issue on
17 liability.

18 THE COURT: OK. Did you have a hearing before Judge
19 Rakoff?

20 MS. GOODELL: Yes, your Honor.

21 THE COURT: And then the default occurred, and there
22 was no determination other than the default concerning either
23 the liability or the retaliation.

24 MS. GOODELL: That is correct, your Honor. The
25 determination was just for the preliminary injunction only.

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Merino - cross

1 THE COURT: Do you understand -- you probably don't,
2 Mr. Cho -- that when you defaulted --

3 MR. YUN S. CHO: Yes, sir.

4 THE COURT: -- on the underlying claim, then the
5 question of whether or not the plaintiff would prevail on a
6 claim of discrimination and retaliation was taken off the table
7 because you defaulted on those claims. So the plaintiffs have
8 a default on the issues that they raised, including
9 discrimination and retaliation. So even though Judge Rakoff
10 may have made some statements with regard to preliminary
11 injunction concerning what he thought was the likelihood of
12 success, that is not a final determination of success. So he
13 never determined that there was no retaliation.

14 MR. YUN S. CHO: I understand, your Honor.

15 THE COURT: Is there anything else?

16 MR. YUN S. CHO: No, nothing further, your Honor.

17 MS. GOODELL: We have nothing further, your Honor.

18 THE COURT: You may step down, Mr. Merino.

19 (Witness excused)

20 THE COURT: Mr. Cho.

21 MR. YUN S. CHO: Yes, sir.

22 THE COURT: Normally I am talking to *pro se*
23 plaintiffs, but since you are a defendant and acting *pro se*, do
24 you understand the issues that are going to be considered by
25 me? I am going to be considering damages, not liability.

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Merino - cross

1 MR. YUN S. CHO: Yes, your Honor.

2 THE COURT: You have seen what the plaintiffs did in
3 their calculation. They did a calculation assuming the number
4 of employees that would be there at any given time and the
5 number of hours that those employees would work on a weekly
6 basis. To the extent that you have any evidence objectively on
7 those issues, you should have responded to their motion.
8 Because you are a layperson, I am not sure that you quite
9 understood that. But do you understand what it is that you
10 would have to address?

11 MR. YUN S. CHO: I think I do, your Honor.

12 THE COURT: Since they did a global calculation,
13 unless you have something which is going to address either the
14 number of hours worked or the number of employees, it is
15 probably not going to affect the calculation that they did.

16 MR. YUN S. CHO: My question, your Honor, is their
17 rate. I don't know how they can produce that rate per hour.
18 It is not like plaintiffs' counsel can set the rate how much I
19 suppose to pay to my workers.

20 THE COURT: OK. In the absence of actual numbers what
21 the plaintiff does is reconstruct what the rate would be based
22 upon the hours worked, and that is the way it is done.
23 Obviously if you are the employer and you don't structure it
24 correctly, then somebody has to come up with some way of
25 determining what the effective hourly rate was, and that is

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Merino - cross

1 what the plaintiffs are attempting to do. Because you have
2 paid a fixed rate, in order to do calculations under the
3 statute you have to figure out what the effective hourly rate
4 was.

5 So given the fact that you are a layperson, Mr. Cho,
6 and since I have identified for you what it is that forms the
7 basis of the plaintiffs' calculations, and you have been here
8 today and you have heard the testimony, if you have any
9 evidence or any arguments that you wish to make on those
10 issues, I will give you an additional two weeks to make those
11 arguments.

12 MR. YUN S. CHO: Yes, your Honor.

13 THE COURT: That is, what the hours were worked and
14 how many employees there were, and if you have anything on the
15 damages that are claimed for Mr. Merino, which include
16 compensatory damages. I am not sure you understand what
17 compensatory damages are.

18 With a finding of discrimination by retaliation,
19 Mr. Merino is entitled to damages for that. You can challenge
20 the amount of damages and say that he is not entitled to that
21 amount for whatever reason you think is appropriate.

22 Anything else before we adjourn?

23 MR. MICHELS: Yes, your Honor. Is there a date that
24 the court would like us to submit our fee application?

25 THE COURT: Do you think that you will be filing a

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Merino - cross

1 response to his submission?

2 MR. MICHELS: I am sure that we will.

3 MR. YUN S. CHO: Could I have one month instead of two
4 weeks, your Honor?

5 THE COURT: I will give you until the end of the year.

6 MR. YUN S. CHO: Thank you, your Honor.

7 THE COURT: January 15th. I'm sorry. January 17th.

8 MR. MICHELS: The other issue, your Honor, is that we
9 have been serving defendants by e-mail and by certified mail to
10 the last address that we have, but we have been getting a lot
11 of mail returned to us as unaccepted. So if there is another
12 address that the defendants can provide us with so we can
13 properly serve them.

14 THE COURT: Mr. Cho, you are directed to give the
15 plaintiffs an address at which you can be served.

16 MR. YUN S. CHO: The address they have is right, sir.
17 The thing is I am not there all the time.

18 THE COURT: If you are not there, it gets returned?

19 MR. YUN S. CHO: No, your Honor. Sometimes the
20 receipt is missing. Sometimes I get, sometimes I don't.

21 THE COURT: Which address is it that you say is the
22 correct address.

23 MR. YUN S. CHO: 58-87 55th Street, Maspeth, New York
24 11378.

25 THE COURT: If the plaintiffs send to that address, we

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Merino - cross

1 will assume they have served you.

2 He says that is the correct address. I don't know why
3 it is coming back, but he said it on the record. If you can
4 demonstrate that you served at that address, that to me will
5 suffice.

6 MR. MICHELS: Thank you, your Honor.

7 THE COURT: For now I think we will adjourn. We will
8 get your brief, Mr. Cho. As a *pro se*, I do want you to have
9 every opportunity to understand what it is you need to address.
10 If you have any questions, this is a good time to ask them.

11 MR. YUN S. CHO: No, your Honor.

12 THE COURT: Do you know what you need to do?

13 MR. YUN S. CHO: Yes.

14 THE COURT: We will be adjourned.

15 As to the notice issue, it does seem to me that to the
16 extent we are talking about notice to the class it probably
17 ought to wait until Judge Rakoff has signed off on this.

18 MS. GOODELL: Yes, your Honor. In fact, I believe
19 that our proposal is that we provide the notice after the
20 judgment has been paid so that we have something to pay the
21 people.

22 THE COURT: All right. To be continued.

23 Thank you.

24 (Adjourned)

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